IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No. 559 of 2002

Reserved on : March 14, 2007

Date of Decision: April 12, 2007

Diwakar Dutt Sharma	Petitioner
Versus	
Union of India and others	Respondents

Coram

The Hon'ble Mr. Justice **Sanjay Karol,J.**

Whether approved for reporting[1]?

For the petitioner: Mr.Shrawan Dogra, Advocate.

For the respondents: Mr.Sandeep Sharma, Asstt. Solicitor General of India.

Sanjay Karol, J.

Petitioner herein was enrolled in the Army in the Corps of EME on 2nd March, 1985. He worked as Radar Mechanic and at the time of his discharge from service on 30th November, 1992 he was working at 510 Army Base Workshop, Meerut Cantt.

Before I advert to the relevant facts, it will be necessary to note down the position of law with regard to admissibility of disability pension to various personnel in the Army. Pension Regulations for Army, 1961 (herein-after referred to as `the Regulations") have been brought for settlement of all claims of pension, gratuity and allowances of

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Whether the reporters of Local Papers are allowed to see the Judgment?

personnel of Indian Army, at the time of individual's retirement, release, resignation, discharge and death etc..Part-I of these Regulations stipulates that unless otherwise specifically provided a disability pension may be granted to any individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II. Appendix-II referred to in Regulation 173 has 9 Clauses and Annexures. For the purposes of entitlement and disbursement of disability pension, Clause (2), Clause (4) and Clause (7) of Appendix-II is relevant. The Army Act, 1950 (Section 192) empowers the Central Government to frame Regulations for defence personnel. Clause (ii) clearly stipulates that disablement or death shall be accepted as due to military service provided it is certified that the disablement is due to a wound, injury or disease attributable to military service, or arose during military service and has been and remains aggravated thereby. The relevant rules are Rules 2,3,4 and 7 which read as follows:

> "2 Disablement or death shall be accepted as due to military service provided it is certified that:

(a) the disablement is due to a wound, injury or disease which—(i) is attributable to military service'; or (ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by—(i) a wound, injury or disease which was attributable to military service; or (ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

(3) There must be a casual connection between disablement and military service for attributability or aggravation to be conceded.

(4) In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claiant in field service cases.

(7) In respect of disease, the following rules will be observed:

(a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be

stated that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service"

Undoubtedly, petitioner has been working under harsh and varied temperatures, topography and condition. He has been making himself vulnerable to exposures to high tension electricity wires and transformers. His service record suggests that at the time of his enrolment into the Army, petitioner was hale and hearty and never suffered from any disease. Apart from being physically fit and having participated in various activities of his unit including Sports, petitioner offered himself to be given a chance to take part in military operation during Kargil war.

However, for the first time, petitioner suffered illness when petitioner was travelling in train and vide order dated 4th February, 1992, petitioner was informed that he had been placed in permanent low medical category due to "Generalised Seizure Disorder" with effect from 9th December, 1991

to 8th December, 1993 and he was asked to show cause as to why he be not discharged from service.

Petitioner is stated to have responded to the same, inter alia, stating that he has been physically fit and has been a meritorious student all throughout. He has been a sportsman and the disease stated to have occurred during his service in discharge of his duties. Having not found favour with the explanation petitioner was discharged from service with effect from 30th November, 1992. The petitioner's application for claim of disability pension was also rejected vide letter dated 26th May, 1993. Petitioner's disability is assed at 50% which has increased upto 65%.

It is the case of the respondents that the petitioner's disability is neither attributable nor aggravated by military service.

Undoubtedly the opinion of the Medical Board is not to be taken lightly. However, this Court while exercising powers under writ jurisdiction, in equity and law, has the power to look into various attending circumstances. Undoubtedly the petitioner has a good academic and sports track record. At the time of his enrolment he was undoubtedly hale and hearty. There is never any cause of complaint of any nature, against the petitioner at any point of time during the course of his service. The performance of the petitioner was

efficient and very good. Petitioner has been posted at different geographical conditions, harsh and difficult climatical conditions and with the nature of the work assigned to the petitioner the possibility of the petitioner having suffered disability during the course of his employment cannot be ruled out absolutely. He has served the Army and the problem has to be looked into with human heart. A person does not acquire or suffer disability by choice and such a person, if not protected, is not only bound to suffer personally but also make other suffer who are dependant upon him economically and socially.

The disease can be aggravated due to stress and strain suffered by the petitioner while rendering service for the cause of the Nation. He has been exposed to high tension wires and transformers. The attending facts and circumstances have to be considered and in the present case, I feel interference of the Court is required.

For the foregoing reasons, the order of rejection of the claim of the petitioner for disability pension is set aside. The respondents are directed to calculate the disability pension to the petitioner in accordance with Pension Regulations and Rules within a period of three months from today.

April 12, 2007 (Sanjay Karol),
(C) Judge